IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 990.

MORTON FRIEDMAN, *Petitioner,*

v.

LEWIS B. SCHWELLENBACH, ET AL., *Respondents.*

STATEMENT OF UNITED PUBLIC WORKERS OF AMERICA (CIO) AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING.

The United Public Workers of America (CIO) urges the Court to reconsider its denial of certiorari in the above-entitled matter and to grant the writ. As pointed out in our brief amicus curiae, Friedman was dismissed from the federal service and branded as disqualified for public service because the Civil Service Commission had a "reasonable doubt as to his loyalty." It is not claimed that he was a member of the Communist Party and the Government specifically admitted that he was not charged with membership in an organization advocating the overthrow of the Government. He was persecuted solely because of past opinions as to our participation in the war, which are *now* suspect—

although at the time he held them they were widely shared by persons of undoubted repute. This was coupled with membership for a time in an organization designated by the Civil Service Commission as "Communist dominated" although its activities are not charged to be unlawful or directed to subversion of our Government. There is no evidence of this alleged domination or that Friedman knew of it, if it were the fact. The case thus presents the issue of punishment for political opinions and the extreme application of the doctrine of guilt by imputation.

It is possible that this Court's denial of certiorari involved an assumption that the procedure and standard involved in the instant case were transitory wartime phenomena. It has now become clear that the case involves studied and permanent Government policy (Exec. Order 9835, March 21, 1947, Fed. Reg. March 25, 1947) which we assert to be an illegal and unconstitutional assault upon the liberty of opinion of public officials—a class whose freedom of opinion is most vital to the preservation of our nation. This Court's denial of certiorari has been the spring which has released a devastating and destructive attack upon fundamental values of our society.

The Friedman case confronts this Court with the duty to reassert the doctrine that dismissal of Government officials on the basis of "loyalty" standards is subject to judicial review, and presents it with the opportunity to restate and to apply to existing circumstances the constitutional and statutory doctrines relating thereto which are the foundation of our democracy. We feel it our duty as members of this bar to say bluntly to this Court that if it fails to review the Friedman case, it will have sanctioned by default a terrible assault upon the liberties of the American people. The first object of this assault is the personnel of Government.

The ruthless extermination of freedom of opinion and the forceful suppression of unorthodox thought and position among these people who make and execute government policy is profoundly serious. Government policy is and

should be the result of the free play of ideas and the frank interchange of diverse opinions among those in the executive as well as the legislative branch of the Government. It is from this diversity of ideas that sound and effective Government policy is distilled. The effect of action such as that in the Friedman case and the Governmental measures taken following this Court's action is to classify an enormous although vague and undefined segment of opinion and idea as taboo. He who entertains opinions or expresses ideas in the vast part of the spectrum left of center must live in mute fear. His unorthodoxy—however slight it may be—if detected or even suspected, now exposes him to the mercies of a spy system and the penalty of being branded forever as disloyal. Nor, as the Friedman case illustrates, is there a locus penitentiae; for a federal employee who has once dared to adhere to an unorthodox opinion may later embrace reaction; but even if he should later become persuaded that anything left of reaction is un-American, he could not be purged of the sin of Jeffersonianism, disagreement with our policy towards Greece, Turkey, or Soviet Russia, or whatever dangerous form of "radicalism" he may once have embraced.

But this assault on freedom of opinion will not stop with Government employees. Assaults upon freedom have a habit of growing beyond a stated objective. They quickly attack not merely a manifestation, but freedom itself. So this crusade, once under way, will not stop with its victims in the federal service. It will spread and is now spreading over this country, blighting our democracy and bringing fear and distrust to American homes throughout the nation. This nation is founded upon the principle that diversity and unorthodoxy are the fertile soil of democratic society; and that, in the words of this Court (*West Virginia* v. *Barnette*, 319 U. S. 624 at 642), "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." Neither the Civil Service Commission, the Attorney General nor the President himself should be excepted from this prohibition.

Counsel realize that it is comparatively unusual for this Court to reconsider an order denying certiorari. But this, we respectfully submit, is an unusual situation; an emergency as great in our political and spiritual life as was the coal miners' strike in our economic affairs. A denial of certiorari in this case is a decision that the executive branch of the Government may, unbridled and unguided, launch this country upon a course of action which threatens to destroy our form of Government and our basic liberties. The danger in fact is that without the guidance of this Court and the assurance that it stands guard, a drive to eliminate Communism from our national life will itself become a more imminent threat to our democracy than is Communism itself.

For the reasons stated above and for the reasons stated in the petition for rehearing filed on behalf of Morton Friedman, we respectfully join in the request for a rehearing of the petition for certiorari and pray that upon rehearing the writ issue.

Respectfully submitted,

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April, 1947.